

**ASSEMBLY BILL**

**No. 915**

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**Introduced by Assembly Member Logue**

February 26, 2009

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An act to amend Section 25740 of the Public Resources Code, and to amend Sections 399.11, 399.12, 399.14, and 399.15 of the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 915, as introduced, Logue. Renewable energy resources.

The Public Utilities Act imposes various duties and responsibilities on the Public Utilities Commission (PUC) with respect to the purchase of electricity and requires the PUC to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation, as defined, pursuant to the California Renewables Portfolio Standard (RPS) Program. The RPS program requires that a retail seller of electricity, as defined, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year. The RPS program requires each retail seller to increase its total procurement of electricity generated by eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its total retail sales of electricity are procured from eligible renewable energy resources no later than December 31, 2010.

This bill would instead require that each retail seller increase its total procurement of electricity generated by eligible renewable energy resources by at least an additional 1% of net program retail sales, as defined, per year so that 20% of its net program retail sales of electricity

are procured from eligible renewable energy resources no later than December 31, 2010. The bill would define net program retail sales of electricity as being total retail sales of electricity by the retail seller within California, minus those retail sales where the load was met by noneligible hydroelectric generation.

The existing Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission (Energy Commission). Existing law establishes the Renewable Resource Trust Fund in the State Treasury and requires that certain moneys collected to support renewable energy resources are deposited into the fund and authorizes the Energy Commission to expend the moneys pursuant to the Renewable Energy Resources Program. The program states the intent of the Legislature to increase the amount of electricity generated from eligible renewable energy resources per year so that amount equals at least 20% of total retail sales of electricity in California per year by December 31, 2010.

This bill would revise the Renewable Energy Resources Program to state the intent of the Legislature to increase the amount of electricity generated from eligible renewable energy resources per year so that amount equals at least 20% of net program retail sales of electricity in California per year by December 31, 2010.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 25740 of the Public Resources Code is
- 2 amended to read:
- 3 25740. It is the intent of the Legislature in establishing this
- 4 program, to increase the amount of electricity generated from
- 5 eligible renewable energy resources per year, so that it equals at
- 6 least 20 percent of ~~total~~ net program retail sales of electricity in
- 7 California per year by December 31, 2010. *Net program retail*
- 8 *sales are total retail sales of electricity, minus those retail sales*
- 9 *where the load was met by noneligible hydroelectric generation.*
- 10 SEC. 2. Section 399.11 of the Public Utilities Code is amended
- 11 to read:
- 12 399.11. The Legislature finds and declares all of the following:

1 (a) In order to attain a target of generating 20 percent of ~~total~~  
2 *net program* retail sales of electricity in California from eligible  
3 renewable energy resources by December 31, 2010, and for the  
4 purposes of increasing the diversity, reliability, public health and  
5 environmental benefits of the energy mix, it is the intent of the  
6 Legislature that the commission and the ~~State Energy Resources~~  
7 ~~Conservation and Development~~ Commission implement the  
8 California Renewables Portfolio Standard Program described in  
9 this article.

10 (b) Increasing California's reliance on eligible renewable energy  
11 resources may promote stable electricity prices, protect public  
12 health, improve environmental quality, stimulate sustainable  
13 economic development, create new employment opportunities,  
14 and reduce reliance on imported fuels.

15 (c) The development of eligible renewable energy resources  
16 and the delivery of the electricity generated by those resources to  
17 customers in California may ameliorate air quality problems  
18 throughout the state and improve public health by reducing the  
19 burning of fossil fuels and the associated environmental impacts  
20 and by reducing in-state fossil fuel consumption.

21 (d) The California Renewables Portfolio Standard Program is  
22 intended to complement the Renewable Energy Resources Program  
23 administered by the ~~State Energy Resources Conservation and~~  
24 ~~Development~~ Commission and established pursuant to Chapter  
25 8.6 (commencing with Section 25740) of Division 15 of the Public  
26 Resources Code.

27 (e) New and modified electric transmission facilities may be  
28 necessary to facilitate the state achieving its renewables portfolio  
29 standard targets.

30 SEC. 3. Section 399.12 of the Public Utilities Code is amended  
31 to read:

32 399.12. For purposes of this article, the following terms have  
33 the following meanings:

34 (a) "Conduit hydroelectric facility" means a facility for the  
35 generation of electricity that uses only the hydroelectric potential  
36 of an existing pipe, ditch, flume, siphon, tunnel, canal, or other  
37 manmade conduit that is operated to distribute water for a  
38 beneficial use.

(b) “Delivered” and “delivery” have the same meaning as provided in subdivision (a) of Section 25741 of the Public Resources Code.

(c) “Eligible renewable energy resource” means an electric generating facility that meets the definition of “in-state renewable electricity generation facility” in Section 25741 of the Public Resources Code, subject to the following limitations:

(1) (A) An existing small hydroelectric generation facility of 30 megawatts or less shall be eligible only if a retail seller or local publicly owned electric utility owned or procured the electricity from the facility as of December 31, 2005. A new hydroelectric facility is not an eligible renewable energy resource if it will cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(B) Notwithstanding subparagraph (A), a conduit hydroelectric facility of 30 megawatts or less that commenced operation before January 1, 2006, is an eligible renewable energy resource. A conduit hydroelectric facility of 30 megawatts or less that commences operation after December 31, 2005, is an eligible renewable energy resource so long as it does not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(2) A facility engaged in the combustion of municipal solid waste shall not be considered an eligible renewable resource unless it is located in Stanislaus County and was operational prior to September 26, 1996.

(d) *“Net program retail sales” of electricity means the total retail sales of electricity by the retail seller within California, minus those retail sales where the load was met by noneligible hydroelectric generation.*

~~(d)~~

(e) “Procure” means that a retail seller or local publicly owned electric utility receives delivered electricity generated by an eligible renewable energy resource that it owns or for which it has entered into an electricity purchase agreement. Nothing in this article is intended to imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling a retail seller’s obligation to comply with this article or the obligation of a local publicly owned electric utility to meet its renewables portfolio standard implemented pursuant to Section 387.

1 (e)

2 (f) “Renewables portfolio standard” means the specified  
3 percentage of electricity generated by eligible renewable energy  
4 resources that a retail seller is required to procure pursuant to this  
5 article or the obligation of a local publicly owned electric utility  
6 to meet its renewables portfolio standard implemented pursuant  
7 to Section 387.

8 (f)

9 (g) (1) “Renewable energy credit” means a certificate of proof,  
10 issued through the accounting system established by the Energy  
11 Commission pursuant to Section 399.13, that one unit of electricity  
12 was generated and delivered by an eligible renewable energy  
13 resource.

14 (2) “Renewable energy credit” includes all renewable and  
15 environmental attributes associated with the production of  
16 electricity from the eligible renewable energy resource, except for  
17 an emissions reduction credit issued pursuant to Section 40709 of  
18 the Health and Safety Code and any credits or payments associated  
19 with the reduction of solid waste and treatment benefits created  
20 by the utilization of biomass or biogas fuels.

21 (3) No electricity generated by an eligible renewable energy  
22 resource attributable to the use of nonrenewable fuels, beyond a  
23 de minimis quantity, as determined by the Energy Commission,  
24 shall result in the creation of a renewable energy credit.

25 (g)

26 (h) “Retail seller” means an entity engaged in the retail sale of  
27 electricity to end-use customers located within the state, including  
28 any of the following:

29 (1) An electrical corporation, ~~as defined in Section 218.~~

30 (2) A community choice aggregator. The commission shall  
31 institute a rulemaking to determine the manner in which a  
32 community choice aggregator will participate in the renewables  
33 portfolio standard program subject to the same terms and conditions  
34 applicable to an electrical corporation.

35 (3) An electric service provider, ~~as defined in Section 218.3,~~  
36 for all sales of electricity to customers beginning January 1, 2006.  
37 The commission shall institute a rulemaking to determine the  
38 manner in which electric service providers will participate in the  
39 renewables portfolio standard program. The electric service  
40 provider shall be subject to the same terms and conditions

1 applicable to an electrical corporation pursuant to this article.  
2 Nothing in this paragraph shall impair a contract entered into  
3 between an electric service provider and a retail customer prior to  
4 the suspension of direct access by the commission pursuant to  
5 Section 80110 of the Water Code.

6 (4) “Retail seller” does not include any of the following:

7 (A) A corporation or person employing cogeneration technology  
8 or producing electricity consistent with subdivision (b) of Section  
9 218.

10 (B) The Department of Water Resources acting in its capacity  
11 pursuant to Division 27 (commencing with Section 80000) of the  
12 Water Code.

13 (C) A local publicly owned electric utility.

14 SEC. 4. Section 399.14 of the Public Utilities Code is amended  
15 to read:

16 399.14. (a) (1) The commission shall direct each electrical  
17 corporation to prepare a renewable energy procurement plan that  
18 includes the matter in paragraph (3), to satisfy its obligations under  
19 the renewables portfolio standard. To the extent feasible, this  
20 procurement plan shall be proposed, reviewed, and adopted by the  
21 commission as part of, and pursuant to, a general procurement  
22 plan process. The commission shall require each electrical  
23 corporation to review and update its renewable energy procurement  
24 plan as it determines to be necessary.

25 (2) The commission shall adopt, by rulemaking, all of the  
26 following:

27 (A) A process for determining market prices pursuant to  
28 subdivision (c) of Section 399.15. The commission shall make  
29 specific determinations of market prices after the closing date of  
30 a competitive solicitation conducted by an electrical corporation  
31 for eligible renewable energy resources.

32 (B) A process that provides criteria for the rank ordering and  
33 selection of least-cost and best-fit eligible renewable energy  
34 resources to comply with the annual California Renewables  
35 Portfolio Standard Program obligations on a total cost basis. This  
36 process shall consider estimates of indirect costs associated with  
37 needed transmission investments and ongoing utility expenses  
38 resulting from integrating and operating eligible renewable energy  
39 resources.

1 (C) (i) Flexible rules for compliance, including rules permitting  
2 retail sellers to apply excess procurement in one year to subsequent  
3 years or inadequate procurement in one year to no more than the  
4 following three years. The flexible rules for compliance shall apply  
5 to all years, including years before and after a retail seller procures  
6 at least 20 percent of ~~total~~ *net program* retail sales of electricity  
7 from eligible renewable energy resources.

8 (ii) The flexible rules for compliance shall address situations  
9 where, as a result of insufficient transmission, a retail seller is  
10 unable to procure eligible renewable energy resources sufficient  
11 to satisfy the requirements of this article. Any rules addressing  
12 insufficient transmission shall require a finding by the commission  
13 that the retail seller has undertaken all reasonable efforts to do all  
14 of the following:

15 (I) Utilize flexible delivery points.

16 (II) Ensure the availability of any needed transmission capacity.

17 (III) If the retail seller is an electric corporation, to construct  
18 needed transmission facilities.

19 (IV) Nothing in this subparagraph shall be construed to revise  
20 any portion of Section 454.5.

21 (D) Standard terms and conditions to be used by all electrical  
22 corporations in contracting for eligible renewable energy resources,  
23 including performance requirements for renewable generators. A  
24 contract for the purchase of electricity generated by an eligible  
25 renewable energy resource shall, at a minimum, include the  
26 renewable energy credits associated with all electricity generation  
27 specified under the contract. The standard terms and conditions  
28 shall include the requirement that, no later than six months after  
29 the commission's approval of an electricity purchase agreement  
30 entered into pursuant to this article, the following information  
31 about the agreement shall be disclosed by the commission: party  
32 names, resource type, project location, and project capacity.

33 (3) Consistent with the goal of procuring the least-cost and  
34 best-fit eligible renewable energy resources, the renewable energy  
35 procurement plan submitted by an electrical corporation shall  
36 include all of the following:

37 (A) An assessment of annual or multiyear portfolio supplies  
38 and demand to determine the optimal mix of eligible renewable  
39 energy resources with deliverability characteristics that may include  
40 peaking, dispatchable, baseload, firm, and as-available capacity.

1 (B) Provisions for employing available compliance flexibility  
2 mechanisms established by the commission.

3 (C) A bid solicitation setting forth the need for eligible  
4 renewable energy resources of each deliverability characteristic,  
5 required online dates, and locational preferences, if any.

6 (4) In soliciting and procuring eligible renewable energy  
7 resources, each electrical corporation shall offer contracts of no  
8 less than 10 years in duration, unless the commission approves of  
9 a contract of shorter duration.

10 (5) In soliciting and procuring eligible renewable energy  
11 resources, each electrical corporation may give preference to  
12 projects that provide tangible demonstrable benefits to communities  
13 with a plurality of minority or low-income populations.

14 (b) The commission may authorize a retail seller to enter into  
15 a contract of less than 10 years' duration with an eligible renewable  
16 energy resource, if the commission has established, for each retail  
17 seller, minimum quantities of eligible renewable energy resources  
18 to be procured either through contracts of at least 10 years' duration  
19 or from new facilities commencing commercial operations on or  
20 after January 1, 2005.

21 (c) The commission shall review and accept, modify, or reject  
22 each electrical corporation's renewable energy procurement plan  
23 prior to the commencement of renewable procurement pursuant  
24 to this article by an electrical corporation.

25 (d) The commission shall review the results of an eligible  
26 renewable energy resources solicitation submitted for approval by  
27 an electrical corporation and accept or reject proposed contracts  
28 with eligible renewable energy resources based on consistency  
29 with the approved renewable energy procurement plan. If the  
30 commission determines that the bid prices are elevated due to a  
31 lack of effective competition among the bidders, the commission  
32 shall direct the electrical corporation to renegotiate the contracts  
33 or conduct a new solicitation.

34 (e) If an electrical corporation fails to comply with a commission  
35 order adopting a renewable energy procurement plan, the  
36 commission shall exercise its authority pursuant to Section 2113  
37 to require compliance. The commission shall enforce comparable  
38 penalties on any other retail seller that fails to meet annual  
39 procurement targets established pursuant to Section 399.15.



1 (f) (1) The commission may authorize a procurement entity to  
2 enter into contracts on behalf of customers of a retail seller for  
3 deliveries of eligible renewable energy resources to satisfy annual  
4 renewables portfolio standard obligations. The commission may  
5 not require any person or corporation to act as a procurement entity  
6 or require any party to purchase eligible renewable energy  
7 resources from a procurement entity.

8 (2) Subject to review and approval by the commission, the  
9 procurement entity shall be permitted to recover reasonable  
10 administrative and procurement costs through the retail rates of  
11 end-use customers that are served by the procurement entity and  
12 are directly benefiting from the procurement of eligible renewable  
13 energy resources.

14 (g) Procurement and administrative costs associated with  
15 long-term contracts entered into by an electrical corporation for  
16 eligible renewable energy resources pursuant to this article and  
17 approved by the commission shall be deemed reasonable per se,  
18 and shall be recoverable in rates.

19 (h) Construction, alteration, demolition, installation, and repair  
20 work on an eligible renewable energy resource that receives  
21 production incentives pursuant to Section 25742 of the Public  
22 Resources Code, including work performed to qualify, receive, or  
23 maintain production incentives is “public works” for the purposes  
24 of Chapter 1 (commencing with Section 1720) of Part 7 of Division  
25 2 of the Labor Code.

26 SEC. 5. Section 399.15 of the Public Utilities Code is amended  
27 to read:

28 399.15. (a) In order to fulfill unmet long-term resource needs,  
29 the commission shall establish a renewables portfolio standard  
30 requiring all electrical corporations to procure a minimum quantity  
31 of electricity generated by eligible renewable energy resources as  
32 a specified percentage of total kilowatthours sold to their retail  
33 end-use customers each calendar year, subject to limits on the total  
34 amount of costs expended above the market prices determined in  
35 subdivision (c), to achieve the targets established under this article.

36 (b) The commission shall implement annual procurement targets  
37 for each retail seller as follows:

38 (1) Each retail seller shall, pursuant to subdivision (a), increase  
39 its total procurement of eligible renewable energy resources by at  
40 least an additional 1 percent of retail sales per year so that 20

1 percent of its *net program* retail sales are procured from eligible  
2 renewable energy resources no later than December 31, 2010. A  
3 retail seller with 20 percent of *net program* retail sales procured  
4 from eligible renewable energy resources in any year shall not be  
5 required to increase its procurement of renewable energy resources  
6 in the following year.

7 (2) For purposes of setting annual procurement targets, the  
8 commission shall establish an initial baseline for each retail seller  
9 based on the actual percentage of *net program* retail sales procured  
10 from eligible renewable energy resources in 2001, and to the extent  
11 applicable, adjusted going forward pursuant to Section 399.12.

12 (3) Only for purposes of establishing these targets, the  
13 commission shall include all electricity sold to retail customers by  
14 the Department of Water Resources pursuant to Section 80100 of  
15 the Water Code in the calculation of *net program* retail sales by  
16 an electrical corporation.

17 (4) In the event that a retail seller fails to procure sufficient  
18 eligible renewable energy resources in a given year to meet any  
19 annual target established pursuant to this subdivision, the retail  
20 seller shall procure additional eligible renewable energy resources  
21 in subsequent years to compensate for the shortfall, subject to the  
22 limitation on costs for electrical corporations established pursuant  
23 to subdivision (d).

24 (c) The commission shall establish a methodology to determine  
25 the market price of electricity for terms corresponding to the length  
26 of contracts with eligible renewable energy resources, in  
27 consideration of the following:

28 (1) The long-term market price of electricity for fixed price  
29 contracts, determined pursuant to an electrical corporation's general  
30 procurement activities as authorized by the commission.

31 (2) The long-term ownership, operating, and fixed-price fuel  
32 costs associated with fixed-price electricity from new generating  
33 facilities.

34 (3) The value of different products including baseload, peaking,  
35 and as-available electricity.

36 (d) The commission shall establish, for each electrical  
37 corporation, a limitation on the total costs expended above the  
38 market prices determined in subdivision (c) for the procurement  
39 of eligible renewable energy resources to achieve the annual  
40 procurement targets established under this article.

1 (1) The cost limitation shall be equal to the amount of funds  
2 transferred to each electrical corporation by the Energy  
3 Commission pursuant to subdivision (b) of Section 25743 of the  
4 Public Resources Code and the 51.5 percent of the funds which  
5 would have been collected through January 1, 2012, from the  
6 customers of the electrical corporation based on the renewable  
7 energy public goods charge in effect as of January 1, 2007.

8 (2) The above-market costs of a contract selected by an electrical  
9 corporation may be counted toward the cost limitation if all of the  
10 following conditions are satisfied:

11 (A) The contract has been approved by the commission and was  
12 selected through a competitive solicitation pursuant to the  
13 requirements of subdivision (d) of Section 399.14.

14 (B) The contract covers a duration of no less than 10 years.

15 (C) The contracted project is a new or repowered facility  
16 commencing commercial operations on or after January 1, 2005.

17 (D) No purchases of renewable energy credits may be eligible  
18 for consideration as an above-market cost.

19 (E) The above-market costs of a contract do not include any  
20 indirect expenses including imbalance energy charges, sale of  
21 excess energy, decreased generation from existing resources, or  
22 transmission upgrades.

23 (3) If the cost limitation for an electrical corporation is  
24 insufficient to support the total costs expended above the market  
25 prices determined in subdivision (c) for the procurement of eligible  
26 renewable energy resources satisfying the conditions of paragraph  
27 (2), the commission shall allow the electrical corporation to limit  
28 its procurement to the quantity of eligible renewable energy  
29 resources that can be procured at or below the market prices  
30 established in subdivision (c).

31 (4) Nothing in this section prevents an electrical corporation  
32 from voluntarily proposing to procure eligible renewable energy  
33 resources at above-market prices that are not counted toward the  
34 cost limitation. Any voluntary procurement involving above-market  
35 costs shall be subject to commission approval prior to the expense  
36 being recovered in rates.

37 (e) The establishment of a renewables portfolio standard shall  
38 not constitute implementation by the commission of the federal  
39 Public Utility Regulatory Policies Act of 1978 (Public Law  
40 95-617).

- 1 (f) The commission shall consult with the Energy Commission
- 2 in calculating market prices under subdivision (c) and establishing
- 3 other renewables portfolio standard policies.

O